

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY CLIFFORD CAWTHON,

Defendant-Appellant.

UNPUBLISHED

June 16, 2005

No. 255127

Wayne Circuit Court

LC No. 03-013811

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Defendant Leroy Cawthon appeals as of right his bench trial convictions for carrying a concealed weapon (“CCW”);¹ assaulting, resisting or obstructing a police officer;² and attempting to disarm a police officer.³ The trial court sentenced Cawthon as a third habitual offender⁴ to 28 months to 10 years in prison for the CCW conviction, 1 to 2 years in prison for the resisting or obstructing an officer conviction, and 28 months to 10 years in prison for the attempting to disarm a police officer conviction, with all sentences to run concurrently. We affirm.

I. Basic Facts And Procedural History

Cawthon’s convictions stem from his struggle with two police officers in the early morning hours of November 27, 2003. Police Sergeant Paul Glaza and Junior Lieutenant Philip Love had been dispatched to respond to a traffic accident. They were both in full uniform and were driving a fully marked police car. On their way to the accident, they saw a car with expired plates make an illegal U-turn. They followed as the car pulled into the driveway of a house. Cawthon was the only one in the car, which belonged to his mother and which he drove once or twice a week. Both officers described the following events at trial, as did Courtnie Harris, Cawthon’s girlfriend. Cawthon exercised his right not to testify.

¹ MCL 750.227(2).

² MCL 750.81d(1).

³ MCL 750.92; MCL 750.479b(2).

⁴ MCL 769.11.

The officers stopped their car and got out. Love stayed behind as Glaza walked up to Cawthon. Glaza asked for Cawthon's license, registration and insurance, and scanned the inside of the car with his flashlight. Glaza saw what looked like the butt of a gun, which was partially wrapped in a black sock and lying on the floorboard in front of the driver's seat. As Glaza scanned the floor with his flashlight, he saw Cawthon make "a motion as if to either hide [the gun] with his foot or to kick it backwards" under the seat. Glaza asked Cawthon to get out of the car, and they walked toward the back of Cawthon's car.

Cawthon had his hands on the trunk of his car when Love walked up to Glaza, and Glaza whispered to Love that there was a gun. Love went to the open door of Cawthon's car, saw a partially exposed gun in a black sock, picked up the gun, and put it in his pocket. As Love came back around the car, Glaza tried to handcuff Cawthon and Cawthon began to struggle against him. Cawthon stiffened his arm so Glaza could not pull Cawthon's arm behind his back, and Glaza and Love tried to push him down onto the trunk of the car. Cawthon pushed back as the officers continued trying to handcuff him and, at some point, the back of Cawthon's head struck Love in the face. The struggle continued and all three men fell to the ground.

Glaza testified that Cawthon fell on top of him. Glaza was wearing a gun, which had been secured in its holster before he stopped his car. While Cawthon was on top of him, Glaza heard a popping noise and felt the gun starting to come out of its holster. He surmised later that the noise had been from Cawthon breaking the snap off the "thumb break," which secures the gun in the holster. Glaza pushed the gun back into its holster, pushed Cawthon off him, and saw Cawthon land on top of Love.

Love described the three men falling down and then remembers screaming, yelling and punching. Then Love felt "something on his holster." Love got his arm around Cawthon's neck, and felt the gun coming out of his holster. Love and Cawthon struggled for the gun and Love yelled to Glaza that the Cawthon was getting his gun. The gun was finally knocked free and Cawthon took off running. Glaza chased him, and finally took him into custody with the help of other officers, who had arrived after Glaza called for assistance on his police radio. Meanwhile, Love picked up his gun and the handcuffs and got back in the police car. Cawthon had already been arrested when Love caught up to Glaza. The gun retrieved from Cawthon's car was later placed in evidence with the police department, but it was not tested for fingerprints.

Harris, Cawthon's girlfriend, describes the events differently. She lived in the upper story of the house where the events took place and had been looking out the window while waiting for Cawthon to arrive. She testified that he pulled up and beeped the horn, so she went down to the first floor and opened the front door. She saw Cawthon get out of the car, and then he walked toward the front porch and had almost reached the first step as the police car pulled up. At first, Harris says she could not tell it was a police car because it was dark outside and they did not have their overhead lights on. She knew it was the police when both men got out of the car wearing uniforms; they then followed Cawthon up the walkway to the house. She testified they said, "hey," and "grabbed" Cawthon, took him back to his car, pushed him up against the driver's side of the car, and began to pat him down. The younger officer then took Cawthon to the back of the car while the older officer opened the driver's side door and began searching the interior of the car. Then the older officer got out of the car and told the younger officer to handcuff Cawthon. Harris could see nothing that led her to know why Cawthon was being arrested.

She testified Cawthon asked her to go call his mom, and so she went upstairs to the phone. She heard him holler or scream, “[h]ey, hey,” and when she went back to the door she saw only the older officer standing outside. It looked like the officer had his gun drawn, and he “said some profane words” to her and told her to go back inside the house. She did not see Cawthon again that night.

During his cross-examination, Glaza testified that he did, in fact, turn on the overhead lights of the police car as he pulled to a stop at the driveway. He also reiterated that Cawthon did not get out of the car until Glaza asked him to get out. He said Cawthon never walked up to the porch. Love was asked on cross-examination, “[d]id [Cawthon] . . . [o]n his own . . . get out of the car and try to walk toward the residence?” Love’s reply was, “[t]he only thing I know about that, he was yelling at the residence.” Neither Glaza nor Love initially saw a woman in the doorway of the house. Love looked “over the entire area of the house,” and “saw nobody there.” Glaza’s attention was “fixated” on Cawthon; he only saw the woman “after the fact.”

Cawthon was charged with CCW, resisting or obstructing an officer, attempting to disarm a police officer, possessing a firearm during the commission of a felony,⁵ and for being a felon in possession of a firearm.⁶ He was acquitted of the last two charges because there was no evidence in the record showing he possessed the firearm at the time he struggled with the officers or that Cawthon had been previously convicted of a felony.

II. Sufficiency Of The Evidence

A. Standard Of Review

Cawthon argues that there was insufficient evidence to support any of his three convictions. We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁷

B. Carrying A Concealed Weapon

A conviction for CCW requires proof (1) of the presence of a weapon in a vehicle operated or occupied by defendant, (2) that the defendant knew or was aware of the weapon’s presence, and (3) that the defendant was carrying the weapon.⁸ Reasonable inferences drawn from circumstantial evidence may provide sufficient proof of these elements.⁹ Cawthon argues that there was insufficient evidence that he knew there was a gun in the car. He points to the

⁵ MCL 750.227b.

⁶ MCL 750.224f.

⁷ *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

⁸ MCL 750.227; *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999).

⁹ *Id.*

facts that he did not own the car and the gun was not tested for fingerprints. He also notes there were conflicts in the officers' testimony concerning the gun.

Cawthon regularly drove the car, the gun was under the seat in which he was sitting, and the gun was visible even from outside the car. Furthermore, one officer testified that, after he shone his flashlight on the gun, Cawthon moved his leg to hide the gun from view. This evidence is sufficient for a rational trier of fact to infer Cawthon was aware of the gun's presence. Moreover, the record does not support Cawthon's claim that conflicts in the officers' testimony created doubt concerning whether Cawthon moved his leg to hide the gun. One officer testified the gun was not entirely hidden by the seat when it was retrieved from Cawthon's car. This is consistent with the other officer's testimony that, when Cawthon moved his leg, Cawthon *either* pushed the gun under the seat *or* blocked it from view with his leg.

C. Resisting Or Obstructing An Officer

Cawthon argues there was insufficient evidence he resisted or obstructed an officer because there was no proof the arrest itself was lawful. However, convictions under MCL 750.81d(1) do not require proof of lawful arrest.¹⁰ Rather, proof is required that a defendant resisted an officer he knew or had reason to know was performing his duties.¹¹

Here, the officers were on duty responding to a dispatch when they saw Cawthon make an illegal U-turn and they noticed his car's plates were expired. The officers were driving a marked car and were in full uniform when they approached, and one officer requested Cawthon's driver license, registration, and proof of insurance. This is sufficient evidence Cawthon knew or had reason to know they were officers performing their duties. Cawthon claims the different version of events recounted by Cawthon's girlfriend cast doubt on how the officers approached Cawthon and whether they requested his license and other information. Even according to his girlfriend's version of events, Cawthon likely knew or had reason to know the men in full uniform driving a marked car were officers performing their duties. Regardless, in appeals claiming insufficient evidence, we must resolve conflicts in the evidence in favor of the prosecution.¹² Moreover, the trial court found the officers' testimony credible and this Court leaves determinations of witnesses' credibility to the trier of fact.¹³

D. Attempting To Disarm An Officer

Cawthon similarly argues there was insufficient evidence he attempted to disarm the officers because there was no proof of lawful arrest. Again, this offense does not require such proof. MCL 750.479b requires proof a defendant took a weapon, without consent, from a person whom the defendant (a) "knows or has reason to believe [is] . . . a peace officer or corrections

¹⁰ See *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004).

¹¹ *Id.*; MCL 750.81d.

¹² See *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

¹³ See *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

officer” while (b) the officer is “performing his or her duties as a peace officer or corrections officer.”¹⁴ There is no requirement of proof of a lawful arrest. As discussed, there was sufficient evidence to establish that Cawthon knew or had reason to believe that the men were officers, and that they were performing their duties when Cawthon attempted to disarm them.

Affirmed.

/s/ Hilda R. Gage
/s/ William C. Whitbeck
/s/ Henry William Saad

¹⁴ MCL 750.479b(2)(a), (b); see also CJI2d 13.18(2), (3).